



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0180]

Entry-Level Driver Training: Robert Towle; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption application from Robert Towle, who sought an exemption on behalf of graduating students of the commercial driver's license (CDL) Prep Class of the New Hampshire Department of Corrections Special School District Granite State High School (GSHS) from two requirements in the entry-level driver training (ELDT) regulations. Mr. Towle requested an exemption from the requirement that a training provider use instructors who meet the definition of "theory instructor." Mr. Towle also requested an exemption from the requirement that an individual who applies for the first time for a Class A or B CDL, or who upgrades to a Class A or B CDL, complete training from a provider listed on the Training Provider Registry (TPR). FMCSA analyzed the exemption application and public comments and determined that the application lacked evidence that the exemption would likely achieve an equivalent or greater level of safety than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722 or richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2022-0180” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2022-0180” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if

granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The entry-level driver training (ELDT) regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, established minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory (i.e., classroom) and behind-the-wheel (BTW) training. These regulations also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and requirements for training instructors.

Under 49 CFR 380.703(a)(4), a training provider must use instructors who meet the definitions of “Theory instructor” and “BTW instructor,” set forth in 49 CFR 380.605, to be eligible for listing on the TPR. The core definitions of “Theory instructor” and “BTW instructor” in 49 CFR 380.605 require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the commercial motor vehicle (CMV) for which training is to be provided, and have either: (1) a minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least 2 years of experience as a BTW CMV instructor, and meet all applicable State qualification requirements for CMV instructors.

There are exceptions to these requirements for theory instructors: (1) an instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, if the instructor previously held a CDL of the same (or higher) class and complies with the other requirements set forth in the definition; and (2) training providers offering online content

exclusively are not required to meet State qualification requirements for theory instructors. In addition, if an instructor's CDL has been cancelled, suspended, or revoked due to any of the disqualifying offenses identified in 49 CFR 383.51, the instructor is prohibited from engaging in theory instruction for 2 years following the date his or her CDL is reinstated.

Under 49 CFR 380.609, an individual who applies, for the first time, for a Class A or Class B CDL, who upgrades to a Class A or B CDL, or is seeking to obtain a passenger (P), school bus (S), or hazardous materials (H) endorsement for the first time must complete driver training from a provider listed on the TPR, as set forth in 49 CFR part 380, subpart G.

Applicant's Request

Mr. Towle seeks an exemption from two provisions in the ELDT regulations: (1) the definition of "theory instructor" in 49 CFR 380.605; and (2) the requirement in 49 CFR 380.609(a) that an individual who applies for the first time for a Class A or B CDL, or who upgrades to a Class A or B CDL, must complete training from a provider listed on the TPR.

Mr. Towle explains that he is an incarcerated inmate in the New Hampshire State Prison. According to Mr. Towle, the New Hampshire Department of Corrections operates a Special School District, Granite State High School (GSHS), that provides a CDL training class. Mr. Towle states that the requested exemptions would allow eligible students at GSHS to receive the requisite theory instruction in order to obtain their Commercial Learner's Permit as a step towards job-readiness as part of their community re-entry plan.

IV. Method to Ensure an Equivalent or Greater Level of Safety

In support of his argument that an equivalent level of safety will be achieved, Mr. Towle notes that New Hampshire is operating under a pilot model to continue using

revised CDL pre-trip vehicle inspection and revised controls skills test procedures following the completion of field tests conducted under a waiver granted by the Agency. He argues that the revised skills test would “provide a comparable level of rigor as the current tests to ensure that participating CDL applicants demonstrate a level of knowledge and skills required to operate CMVs safely.” The tests would be administered in a controlled setting, located within its skills testing facilities. All other safety requirements, such as requiring the applicant to pass the traditional on-road test segment of the skills test would continue to apply. According to Mr. Towle, “New Hampshire will continue to be prohibited from using CDLs to field test applicants unless the applicant passes all the required segments of the skills test.”

V. Public Comments

FMCSA published a notice requesting public comment on Robert Towle’s application on December 1, 2022 [87 FR 73803]. The Agency received eight comments; seven opposed granting the exemption and one supported it. The Truck Safety Coalition, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers jointly filed comments in opposition stating, “Reducing the experience level and quality of training provided by verified, qualified instructors unnecessarily risks the lives of all roadway users and fails to provide Mr. Towles with the quality of education needed to best set him up for success as a professional truck driver. The best course of action for all parties is for GSHS to take the measures necessary to fully comply with ELDT training requirements in the provision of its CDL training class.”

The one commenter in support of granting the exemption stated: “If we are serious about rehabilitation and preparing our incarcerated, who desire to move on with their lives, and wanting to provide for their families, promote the justice system and become fruitful and “normal” citizens, I wholeheartedly agree with this and wish for the

FMCSA to grant this exemption and promote it to all educational systems in prisons who are providing this training.”

VI. FMCSA Safety Analysis and Decision

Under 49 USC 31315(b)(1), to grant an exemption, FMCSA must “find that the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” Among other requirements, 49 CFR 381.310(c)(5) requires a person seeking an exemption to explain how the exemption would likely achieve an equivalent level of safety.

FMCSA evaluated Robert Towle’s application and the public comments. The Agency denies his request for exemption from the definition of “theory instructor” in 49 CFR 380.605; definitions are not, in and of themselves, regulatory requirements and are therefore not subject to exemption. The Agency believes that the requisite two years’ experience in operating a CMV for which training is to be provided , or in providing BTW instruction for the operation of the CMV, is essential in providing appropriate theory instruction to entry-level drivers. These core qualification requirements are embedded in the definition of “theory instructor” and, under 49 CFR 380.703(a)(4), ELDT providers must use theory instructors meeting the criteria set forth in 49 CFR 380.713 (which cross-references 49 CFR 380.605).

The Agency also denies the request for exemption from 49 CFR 380.609(a) because Mr. Towle did not provide sufficient evidence to establish that the exemption would provide an equivalent level of safety as compliance with the existing requirement that applicants obtain theory instruction from a training provider listed on the TPR. Mr. Towle states that, under the requested exemption, an equivalent level of safety would be achieved because the State of New Hampshire is currently participating in a CDL skills test pilot program, which provides a “comparable level of rigor” to the current CDL skills test. The State’s participation in the pilot program, however, is entirely unrelated to

the requirement that a CDL applicant receive *theory* training from a provider listed on the TPR, as set forth in 49 CFR 380.609(a).

Further, a potential training provider must meet all of the applicable eligibility requirements to be listed on the TPR, including the use of qualified theory instructors (as defined in 49 CFR 380.605), as set forth in 49 CFR 380.703(a)(4). Again, the applicant did not provide information establishing that an equivalent level of safety would be maintained by allowing an individual to receive theory instruction from a training provider that is not listed on the TPR. The TPR is a critical piece of the ELDT program, ensuring that ELDT providers meet the eligibility requirements in 49 CFR part 380, subpart G. The TPR, by receiving and retaining driver certification information from training providers and relaying it to States prior to the issuance of a Class A or Class B, also ensures that individual CDL applicants receive ELDT from a qualified training provider.

For reasons stated Robert Towle's exemption application is denied.

Robin Hutcheson,

Administrator.

[FR Doc. 2023-15280 Filed: 7/18/2023 8:45 am; Publication Date: 7/19/2023]